IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANKAGARAJ

CRIMINAL REVISION CASE NO.1975 of 2004
and
Crl.M.P.No.11838 of 2004

E.Udayakumar ... Petitioner/Accused.

Vs.

1. State rep.by
   The Sub Inspector of Police,
   Arakonam Taluk Police Station,
   Arakonam.

2. Selvan
   S/o Udayakumar. ... Respondents/
   Respondents &
   Complainant.

Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure as stated therein.

* * *

For petitioner : Mr.R.Margabandhu
For Respondents : Mr.A.N.Thambudurai,
Govt.Advocate (Crl.side) for R1
Mr.G.Jermiah .. for R2.

* * *

O R D E R

The above Criminal Revision Case has been filed praying to set aside the order dated 19.10.2004 made in Crl.M.P.No.5600 of 2004 by the Court of Judicial Magistrate, Arakonam.

2. Tracing the history of the case, what comes to be known is that the second respondent is the son of the petitioner through Susila; that on the complaint of the second respondent before the Court of Judicial Magistrate, Arakonam, a case was taken on file in S.T.C.No.1090 of 2004 and the same was referred to the first respondent for enquiry; that on enquiry, the first respondent registered a case in Crime No.460 of 2000 for the commission of offence punishable under Sections 445, 448, 294B, and 506(ii) IPC

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and on the basis of the final report filed by the first respondent, the case was taken up on file for the offence punishable under Section 294B and 448 IPC.; that since petitioner admitted the ffence he was convicted by the Judicial Magistrate, Arakonam, for the commission of offence punishable under Section 294B and 448 IPC and a fine of Rs.600/- was imposed.

3. The further case of the petitioner is that thereafter, the second respondent filed a petition in Crl.M.P.No.5600 of 2004 under Section 456 Cr.P.C. praying to evict the petitioner from the house of the second respondent; that since the petitioner was absent at the time when the above Crl.M.P. was taken up for hearing, the Judicial Magistrate has passed an ex parte order directing the petitioner herein to restore possession of the house to the second respondent. It is only testifying the validity of the said order, the petitioner has come forward to file this Criminal Revision on certain grounds as brought forth in the grounds of Criminal Revision.

4. Heard the learned counsel for the petitioner, learned Government Advocate on the Criminal side appearing for the first respondent and the learned counsel appearing for the second respondent as well and the materials placed on record have also been perused.

5. The learned counsel for the petitioner would submit that the order passed by the Magistrate is liable to be set aside since the petitioner has not committed any offence as alleged in the complaint by the second respondent and since it is an order passed on the basis of the voluntary admission on the part of the petitioner believing the advice of the first respondent that there may not be any consequence in admitting the commission of offence since it is a case in between the father and the son.

6. On the other hand the learned counsel for the second respondent would submit that the Criminal Revision Case is not maintainable in law since there is appeal remedy available under Sections 453 and 454 of Cr.P.C. as provided under Section 456(3) of Cr.P.C. as against the order passed by the Judicial Magistrate under Section 456(1) of Cr.P.C. even though if it is passed on the basis of the voluntary admission on the part of the petitioner and therefore, he would pray for dismissal of the above Criminal Revision Case.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is of the view that since there is an order against the petitioner under Section 456(1) of Cr.P.C., and since he has been convicted for the commission of offence of Criminal trespass, he should vacate

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and restore the possession to the admitted owner as ordered by the Magistrate and this Court does not find any illegality or infirmity or error apparent on the face of the records in passing the said order by the trial Court. Further, as provided under Section 456 (3) of Cr.P.C. there is appeal remedy available against the said order made under Section 453 and 454 of Cr.P.C. and hence, the interference of this Court sought to be made into the well considered and merited order passed by the Magistrate is neither necessary nor wanton and the Criminal Revision Case does not merit acceptance and it becomes only liable to be dismissed and hence the following order:

In result,

(i) for the foregoing reasons assigned, the above Criminal Revision Case does not merit acceptance and is dismissed accordingly;

(ii) the order dated 19.10.2004 made in Crl.M.P.No.5600 of 2004 by the Court of Judicial Magistrate, Arakonam is confirmed;

(iii) consequently, Crl.M.P.No.11838 of 2004 is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gr.

To
1. The Judicial Magistrate, Arakonam.
2. -do- through the Chief Judicial Magistrate, Vellore.
3. The Sub Inspector of Police, Arakonam Taluk Police Station, Arakonam.
4. The Public Prosecutor,
High Court, Madras.
+ 1 CC to Mr.G.Jeremiah, Advocate SR NO 55094

CRL.R.C.NO.1975 OF 2004
14.12.2004

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